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DONG YOUNG DIAMOND INDUSTRIAL CO., LTD,

AND DONGSOO LEE.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CONTINENTAL D.I.A. DIAMOND
PRODUCTS, INC., a California corporation,

Plaintiff/Counterclaim Defendant,

v.

DONG YOUNG DIAMOND INDUSTRIAL
CO., LTD, a South Korean company, DONGSOO
LEE, an individual, and DOES 1-10, inclusive,

Defendant/Counterclaim Plaintiff.

Case No. 08-cv-2136-SI

**[PROPOSED] ORDER DENYING
PLAINTIFF'S MOTION TO
DISMISS IN ITS ENTIRETY**

Date: August 29, 2008

Time: 9:00 a.m.

Location: Courtroom 10, 19th Floor

Plaintiff Continental D.I.A. Diamond Products, Inc. ("Continental") moved to dismiss, pursuant to Fed.R.Civ.P 12(b)(6), the Second through Fourteenth Counterclaims of Defendant/Counterclaimant Dong Young Diamond Industrial Co. Ltd. and Dongsoo Lee

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1 (collectively "Dong Young"). The parties have fully briefed the issues and the Court heard oral
2 argument on August 29, 2008.

3 Rule 12(b)(6) dismissal is proper only in "extraordinary" cases. *Vahidallah v. San Diego*
4 *Hous. Comm'n*, 2008 U.S. Dist. LEXIS 57113 (S.D. Cal. July 28, 2008) (citing *United States v.*
5 *Redwood City*, 640 F.2d 963, 966 (9th Cir. 1981)). In evaluating a 12(b)(6) motion, the court
6 must accept the complaint's allegations as true and construe them in the light most favorable to
7 Plaintiff. *See, e.g., Concha v. London*, 62 F.3d 1493, 1500 (9th Cir. 1995), *cert. denied*, 517 U.S.
8 1183, 116 S. Ct. 1710, 134 L. Ed. 2d 772 (1996). Dismissal under Rule 12(b)(6) is appropriate
9 only where the complaint lacks a cognizable legal theory or sufficient facts to support a
10 cognizable legal theory. *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1990).

11 Viewing the allegations of the Counterclaims as true, and construing them in the light
12 most favorable to Dong Young, the Counterclaims adequately plead cognizable causes of action.
13 Accordingly, and for the reasons set forth by the Court at the August 29 hearing, Continental's
14 Motion to Dismiss is DENIED IN ITS ENTIRETY.

15 IT IS SO ORDERED.

16 DATED: August __, 2008

17 _____
18 Honorable Susan Illston
19 United States District Court Judge

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